



## Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

**CORRESPONDENCE.****Question Answered as to Capitation Tax under New Constitution.**

April 24th, 1906.

Editor of Virginia Law Register:

As you ask for opinions of members of the bar, on the question of Mr. John T. Harris, in 11 Virginia Law Register, 1053-4, as to whether the Legislature can disfranchise voters by failure to levy a capitation tax, I think it is fairly plain, that this could not defeat the right to vote. The evident intention of the framers of the constitution, is to take away the right to vote for default in paying capitation tax, and not simply to give the right of suffrage, as a reward for payment of this tax. Without the levy by the Legislature, no tax is assessed or is assessable, and the voter therefore can not pay any tax, of course; yet I think he could be fairly considered as having paid all taxes "assessed or assessable" against him.

A much more serious question occurs to me in reference to § 20 of the constitution, which requires poll taxes to be paid "for three years next preceding that in which he offers to vote." What is the meaning of years? Does it mean calendar or tax year? Though year is generally construed to mean calendar year, yet I am inclined to think that owing to the connection in which it is used here it would be construed to mean tax year. If construed to mean calendar year, it would for several months disqualify most of the voters. In this county, and I suppose the same condition exists all over the state, it is impossible to pay your poll tax until about September 1st, as the Commissioners of the Revenue do not return their books earlier than September. Whilst we rarely have elections in January, yet it is sometimes necessary to have them. When Judge Brown, the senator elected for this district, died on election day, the General Assembly passed an act requiring the election of his successor to be held in December, possibly for fear that if held in January, none but old soldiers could vote, and as the person elected had to be a qualified elector, when elected, none but an old soldier could be elected.

If a special election is held on January 30th, 1907, is it necessary to pay the capitation tax of 1906 in order to vote at that election? The three next preceding tax years are 1903-4-5. I would like very much to know your opinion on this point.

Yours truly,  
E. M. PENDLETON.

**Necessity of Legislative Levy.**—That the legislature can not disfranchise voters by a failure to levy a capitation tax is not only consonant with reason, but seems to be supported by the authorities.

And though most of the following cases deal with the levy and assessment of real property, still their holdings would seem to be of value in solving this proposition.

The first step in taxation, whether by the state or inferior

political subdivisions of the state, is the levy by the proper legislative body. Until this is done there can be no assessment or collection. *State v. Board of Revenue*, 73 Ala. 65.

It is elementary that property, however taxable; that is, however liable to taxation, can not be assessed and subjected to consequent taxes unless the authority which had the right to speak has been heard thus to command. In other words, property in itself taxable can not be assessed and be made to contribute, by taxation, to government expenses, where the proper authority has not directed its assessment. *Smithberg v. Archer*, 108 Iowa 215; *New Orleans Cotton Exch. v. Assessors*, 35 La. Ann. 1154.

A failure to levy a tax under a statute requiring a levy is a fraudulent defect in tax proceedings which destroys the groundwork of the tax. *Dever v. Cornwell*, 10 N. Dak. 123.

A person who erroneously pays as his, a tax assessed to another person of the same name, is not disqualified from voting on the ground of nonpayment of the tax assessed to him. *Hughes's Election*, 3 Lack. Jur. (Pa.) 313.

In Missouri, by statute, express power is given to the county court to levy certain taxes on railroad property, both local and distributable, and the manner is prescribed in which that power shall be exercised. Until the county court has made such levy, the clerk has no power to extend such taxes upon the tax books against the property of the railroad company. *State v. Hannibal, etc.*, R. Co., 135 Mo. 618.

Section 7 of article 6 of the constitution of Washington provides as follows: "The legislature shall enact a registration law, and shall require a compliance with such law before any elector shall be allowed to vote; provided, that this provision is not compulsory upon the legislature except as to cities and towns having a population of over five hundred inhabitants. In all other cases the legislature may or may not require registration as a prerequisite to the right to vote, and the same system of registration need not be adopted for both classes." It has been held, that this provision did not require a registration law to authorize the holding of an election in a city of more than five hundred inhabitants. "Our conclusion," said the court, "is that the right to vote in this state at any election, general or special, resides in those possessing the qualifications prescribed by § 1, art. 6, of the constitution, subject only to compliance with such reasonable provisions respecting registration and regulating the exercise of the right, as the legislature may provide, but the mere failure or neglect of the legislature to make any provision for registration does not operate to deprive those having the qualifications of the constitution from exercising the elective franchise." *Stallcup v. Tacoma*, 13 Wash. 141.

**Meaning of Term Year.**—As to the meaning of the term year it has been held that where applied to matters of revenue, the presumption

is in favor of year meaning fiscal year. *Glasgow v. Rouse*, 43 Mo. 479.

In *Meade County Bank v. Reeves*, 13 S. Dak. 193, it is said: "Ordinarily, when the term year is used in the statute, the calendar year would be intended; yet, when the legislature is making the appropriations for any year, or part of a year, we must presume that it intends the fiscal years as defined by the law of 1891."

**Construction of Contracts.**—It is by no means universally true that the term year means calendar year. Sometimes, in the construction of contracts, the term year has been held not to mean calendar year. For example, a contract to pay money "when the crop is taken off at the end of the year," was construed to mean the end of the cropping year or fruit season, because the court will take notice that the end of the calendar year is long after the season for gathering the crop. *Brown v. Anderson*, 77 Cal. 236, 19 Pac. 487, citing *Knode v. Balridge*, 73 Ind. 54.

---

**Parliamentary Law—Right of City Council to Reconsider Vote by Which Ordinance Is Adopted or Rejected under the Vote Required by the Constitution to Be Taken on a Veto Message.**

Richmond, Va., April 21, 1906.

Hon. J. Garland Pollard,  
State Bank Building,  
Richmond, Va.

My dear Garland:—

Referring to our conversation about the publication in the Law Register of my opinion bearing on the right of either branch of a city council to reconsider a vote by which an ordinance is adopted or rejected under the vote required by the constitution to be taken on a veto message, I beg to enclose you herein copy of same and suggest that you send it to the new owners of the Law Register for publication. It discusses an exceedingly interesting and practical point in constitutional and parliamentary law.

Yours sincerely,

H. R. POLLARD.

Richmond, Va., April 5, 1906.

Hon. Wm. M. Turpin,  
Pres. Board of Aldermen,  
Richmond, Va.

Dear Sir: Referring to our recent interview in regard to the action taken by the Board of Aldermen on the message of the mayor vetoing an ordinance exempting the American National Bank from placing a fire escape upon its building located at the southeast corner of Main and Tenth streets, I beg to say that I have given careful consideration to the question then discussed by us, as to whether the presiding officer of the board could legally entertain a motion to reconsider the vote by which the ordinance failed of its passage, as